GAMING & HOSPITALITY LEGAL NEWS

RECREATIONAL POT COMES TO NEVADA … BUT WHY ARE THE SHELVES EMPTY?

by Kate Lowenhar-Fisher, Jennifer Gaynor, Jeff Silver, and Greg Gemignani

On July 1, 2017, Nevada became the fifth state in the United States to legalize the sale of recreational marijuana. The epicenter of "what happens here, stays here" tourism just added a new vice to its repertoire! So, what's the problem?

Among other things, Nevada's recreational marijuana dispensaries are facing the specter of empty shelves. Why? Because a wrinkle in the ballot measure that legalized recreational marijuana sales in Nevada gives licensed liquor wholesalers a temporary 18-month monopoly on marijuana distribution rights … "unless the [Nevada] Department [of Taxation] determines that an insufficient number of marijuana distributors will result from this limitation." In order to fill its shelves, a Nevada-licensed recreational marijuana dispensary must use a licensed recreational marijuana distributor to transport the product from the cultivation facility to its retail outlet, because the law for recreational use does not allow dispensaries to transport marijuana from a cultivation facility to their stores (whereas dispensaries selling medical marijuana were allowed to move "medical-use" product from cultivation locations without an independent distribution network).

Despite efforts by marijuana dispensaries to stock up prior to July 1, overwhelming demand for recreational marijuana has resulted in dwindling supplies. And now, distributors are nowhere to be found. That is because very few liquor wholesalers have applied to become licensed marijuana distributors, and those that have made such application have failed to meet the requirements for licensure. The Nevada Department of Taxation (NDOT) reported that as of July 7, 2017, ZERO distribution licenses have been issued by NDOT.

Perhaps liquor wholesalers fear risking their *federal* alcohol permits issued by the Alcohol and Tobacco Tax and Trade Bureau? It would appear that marijuana distribution licenses would have to be issued to persons other than liquor wholesalers – however, nothing is that simple. A small group of liquor wholesalers, known as the Independent Alcohol Distributors of Nevada, sued and, on June 21, won a temporary injunction against NDOT to prevent marijuana distribution licenses from being issued to persons other than liquor wholesalers.

In response, on July 7, Governor Sandoval endorsed emergency regulations that would give NDOT the authority to determine

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whether there are a sufficient number of marijuana distributors to service the market – a determination that would allow NDOT to open up distributor licensing to those other than licensed liquor wholesalers. The emergency regulations will be considered by NDOT on July 13. Stay tuned.

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2017 LEGISLATIVE UPDATE – OVERVIEW OF CHANGES TO NEVADA GAMING LAW

by Jennifer Gaynor, Greg Gemignani, Kate Lowenhar-Fisher, and Jeff Silver

The Nevada Legislature, which meets every other year for 120 days, recently wrapped their 2017 session. In this session, the Legislature tackled a diverse set of issues that will impact gaming companies that operate in Nevada, including changes to the confidentiality of information submitted to Nevada's gaming regulators, allowing for pari-mutuel wagers on esports and other events beyond traditional sports and racing, and adjusting the boundaries for casino resort development within the city of Las Vegas.

Assembly Bill 75 – Nevada Gaming Control Board's Omnibus Bill

Assembly Bill 75, which was brought by the Nevada Gaming Control Board ("Board"), exempts manufacturers, distributors, and independent contractors associated with gaming from certain licensing requirements and revises provisions governing the regulation of trustees of an employee stock ownership plan by the Nevada Gaming Commission ("Commission").

What may be the most interesting change, however, is this bill's addition of a fifth possible action that Nevada gaming regulators may take to dispose of a gaming application: "rejection of the application." Before this bill, the Commission could approve or deny an application, or refer the application back to staff (the fourth option available is withdrawal of the application, which may be done at the Board level only). Now, the Commission may "reject" an application. Such a rejection is not a "denial," but it allows the Commission to dispose of an application without having to deny it. This was done to provide the Commission more flexibility. But what is unclear is how other jurisdictions will handle a multi-jurisdictional applicant or licensee that has received a rejection (but not a denial) from Nevada. Additionally, gaming contracts regularly address contingencies that include what may happen if a licensing application that is required for a party to fulfill a contract is withdrawn or denied. This standard gaming contract language will need to be updated to reflect the additional potential outcome of "rejection."

Assembly Bill 219 – Adjusting Gaming Districts in the City of Las Vegas

This was a bill brought on behalf of the City of Las Vegas to help them redefine the location of Gaming Enterprise Districts ("GEDs") within city boundaries, to balance between gaming development and preservation of settled residential areas. This bill eliminates a portion of the Las Vegas Boulevard gaming corridor GED where that GED encroached into an established residential area within the city. The bill also creates the Historic Downtown Gaming District, to encourage development in the historic gaming center of downtown Las Vegas. This district matches up with the City's long-standing "permissive downtown casino district" where nonrestricted gaming would be acceptable, within a zone bordered by Main Street, Stewart Avenue, Third Street, and Carson Avenue. The change was needed to allow for development of new and expanded gaming resorts within the downtown core.

Senate Bill 120 – Adjustments to Nevada's Problem Gambling Program

Senate Bill 120 revises the membership and duties of the Advisory Committee on Problem Gambling. The bill allows Nevada's Governor more flexibility in filling the appointments to the Advisory Committee on Problem Gambling because the

membership requirements had been so narrowly defined that some advisory seats were left vacant as there were no appropriate people to fill them. The bill also provides that the Advisory Committee shall provide advice and information to decision-makers in the state, such as the Governor, Legislature, and the Department of Health and Human Services, about problem gambling for purposes including assisting in the establishment of priorities for problem gambling programs and services and recommending legislation, regulations, or the adoption of public policy concerning problem gambling.

Senate Bill 240 – Pari-Mutuel Wagering for "Other Events"

Brought by the Boyd School of Law gaming law class, Senate Bill 240 clarifies that the pari-mutuel system of gaming may be utilized for wagers on events other than horse racing, dog racing, or sporting events. With the growing popularity of "esports" – competitive video games where players often compete in a stadium-style tournament – the gaming law class believed that it would be helpful to provide flexibility to gaming operators in offering wagers on such events. This bill also allows for pari-mutuel wagering on a variety of other non-racing or sporting events, which may, for example, potentially include the results of reality competition shows.

Senate Bill 376 – Confidentiality of Information Submitted to Nevada's Gaming Regulators

Senate Bill 376 addresses the confidentiality of data and information provided by gaming applicants and licensees to state regulatory agencies. This bill amends NRS 463.120, the statutory section that provides for confidentiality of information submitted to the Board and Commission as part of the Nevada state gaming application process, to provide that

> … if any applicant or licensee provides or communicates any information and data to an agent or employee of the Board or Commission in connection with its regulatory, investigative or enforcement authority:
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> (a) All such information and data are confidential and privileged and the confidentiality and privilege are not waived if the information and data are shared or have been shared with an authorized agent of any agency of the United States Government, any state or any political subdivision of a state … in connection with regulatory, investigative or enforcement authority …
>
> (b) The applicant or licensee has a privilege to refuse to disclose, and to prevent any other person or governmental agent, employee or agency from disclosing, the privileged information and data.

"Information and data" is defined to mean all information and data in any form, including, without limitation, any oral, written, audio, visual, digital, or electronic form, as well as any account, book, correspondence, file, message, paper, record, report, or any document containing self-evaluative assessments, self-critical analysis, or self-appraisals of an applicant's or licensee's compliance with statutory or regulatory requirements.

This change was made because the confidentiality of information obtained by the Board and Commission as a part of their routine regulatory responsibilities has been under continual assault by civil litigants, and the Board wants to encourage full disclosure by applicants.

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